

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

In the Matter of )  
 )  
 Implementation of § 4(g) )  
 of the Cable Television )  
 Consumer Protection Act )  
 of 1992 )  
 )  
 Home Shopping Station Issues )

MM Docket No. 93-8

TO: The Commission

## C O M M E N T S

Miracle Rock Church ("Miracle Rock"), by counsel, hereby offers the following comments in response to the Notice of Proposed Rulemaking released January 28, 1993, in the above-captioned proceeding. The Notice seeks information on which to base the adoption of regulations relating to stations that are predominantly utilized for the transmission of sales presentations ("home shopping stations"), including issues regarding the carriage of such stations on cable systems. In the Cable Television Consumer Protection and Competition Act of 1992, Congress directed the FCC to undertake this rulemaking proceeding.

Miracle Rock is a not-for-profit Utah corporation. It is also the proposed assignee of station KOOG-TV ("the Station"), Channel 30, Ogden, Utah. See (File No. BPCT-930315KE). The Station was formerly licensed to Ogden Television, Inc. Recently, pursuant to prior FCC approval, the license was assigned to a

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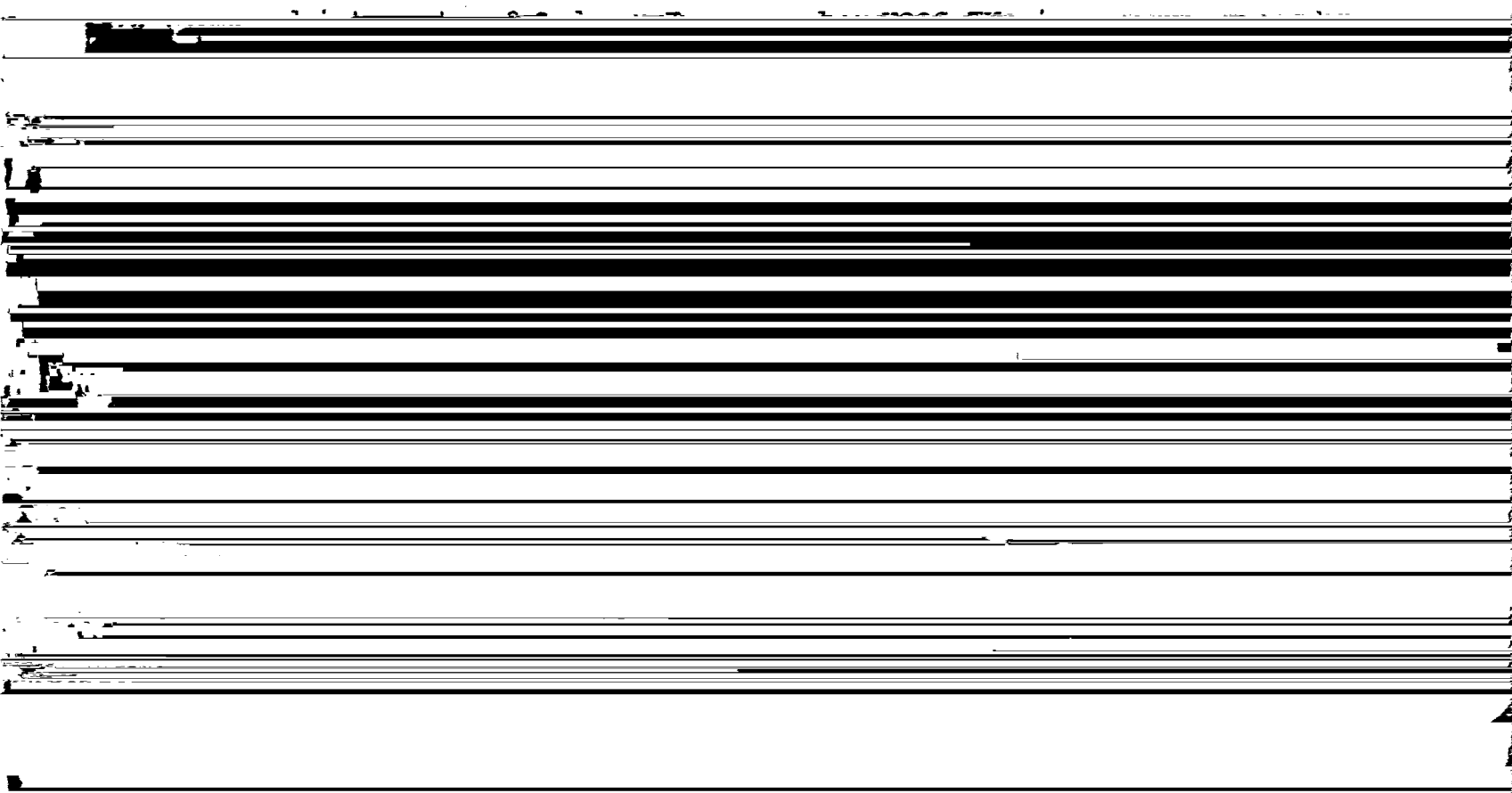
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Receiver, Scott Stuart, from whom Miracle Rock proposes to purchase the station license.

Station KOOG-TV is affiliated with Home Shopping Network ("HSN"). The Station carries HSN programming for eight hours per day, from 8:00 a.m. to 4:00 p.m. During the Station's remaining nine hours of operation per day, it provides programming of interest to Utah residents, including some locally originated programming and a children's program.<sup>1</sup>

Station KOOG-TV is the only operating commercial television station licensed to Ogden. It is therefore the only local television voice in Utah's second largest city, except for an educational station.

Station KOOG-TV provides an important public service in the community. As the only local commercial television voice, it is the only station in Ogden obligated to address the problems, needs



As the new licensee, Miracle Rock intends to retain all of the existing programming responsive to the needs of the Ogden area. In addition, Miracle Rock plans to broadcast religious and public affairs of particular interest to the community. Specifically, Miracle Rock's programs will address people's needs relating to marriage problems, drugs, alcohol, housing, food and clothing needs, and support groups (for former addicts); in short, problems that people have.

In addition, Miracle Rock intends to address the needs of Utah's Hispanic community, which is centered in Ogden and Salt Lake City. Miracle Rock's President and General Manager is Isaac Max Jaramillo, a Hispanic; its board of directors is entirely composed of women and Hispanic members. A substantial proportion of the total membership of the organization is Hispanic. There is presently no significant television voice for these individuals within Channel 30's service contour.

Cable carriage is critical to the viability of Channel 30. Without it, the Station cannot survive. As mentioned above, the Station is currently in receivership because the former owner was unable to make the Station financially viable. Affiliation with HSN provides a major share of the revenues of KOOG-TV. In a market dominated by the Salt Lake City stations (which include a VHF independent and a strong UHF independent), the HSN affiliation payments represent the only way to keep the Station on the air. Absent the affiliation with HSN, Miracle Rock could not contem-

plate expansion of the local programming offered by KOOG-TV, or even sustain the existing levels.

Miracle Rock submits that a licensee's broadcast of home shopping programming in lieu of other commercial entertainment programming is irrelevant to the issue of whether a station is operating in the public interest. Certainly, few reasonable viewers would argue that most commercial entertainment programming provides any greater intrinsic value to the community than the programming of HSN. However entertaining music videos may be, for example, they do not exactly resolve the needs and problems of the community, except perhaps for the need to escape one's problems. Accordingly, there is no basis for differentiating between the two types of programs in determining cable carriage issues.

Stations which carry home shopping programming should not be distinguished from those carrying any other type of entertainment programming for the purposes of mandatory cable carriage. If there is any distinction, it should be noted that home shopping programming at least provides a service for people who may be confined to their homes or are otherwise unable to shop. Nevertheless, both stations carrying home shopping programming and those carrying entertainment programming should be entitled to cable carriage on an equal basis. It is not the commercial programming of a station which determines its value to the community. It is the station's awareness of the needs of the community and its responsiveness to those needs that is paramount.

Channel 30, under the control of Miracle Rock, will be responsive to the community's needs and provide a service to the local community. Its continued viability is clearly in the best interests of Ogden and of the Utah television market as a whole. That viability depends entirely on cable carriage. Even in a market like Utah with relatively low cable penetration, a station like KOOG-TV simply cannot afford to be cut off from the large proportion of its potential audience which subscribes to cable. The Station should not be penalized for choosing home shopping programming, which is valuable to many individuals, over other types of commercial programming with little or no intrinsic value.

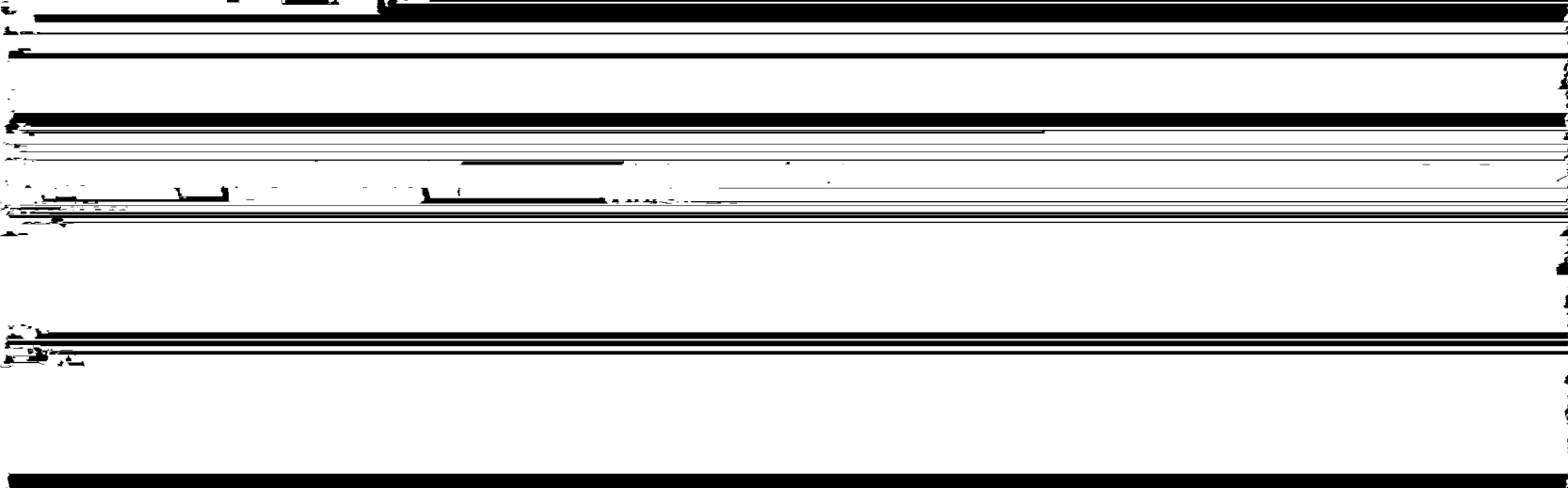
Among the biggest handicaps KOOG-TV has faced in the past is its lack of cable carriage in many significant communities in the ADI, including Logan (the home of Utah State University) and Provo. In other cities, KOOG-TV was, until recently, hindered by poor channel positioning.

In this regard, the pro-competitive purposes of the Cable Act should be remembered. Cable television systems hold virtual monopolies in their respective franchise areas, and (absent mandatory carriage) control access by broadcast stations to the households that subscribe to cable. In most markets, that set of households comprises the majority of upscale homes, and is an essential part of the audience for an over-the-air broadcaster to reach. Yet as keepers of the gate, cable operators have an incentive to keep traffic out of the home which interferes with the private interests of the cable system owner.

As more and more cable television systems have sought, and found, substantial sources of revenue in the form of local advertising sales, it becomes more and more in the interest of the cable operator to limit access to the cable system and to exclude stations which compete for audience and revenues with the cable system's local advertising sales operation. As a matter of antitrust policy, it becomes more and more important that the Federal Government prevent the cable operator from abusing his monopoly power in that fashion so as to limit competition.

That is particularly true in the area of home shopping. Many of the major cable system owners also own interests in home shopping programs, principally including the QVC channel. Cable operators who claim the right to keep HSN affiliates off their systems are not doing so out of pure motives grounded in First Amendment concerns about the propriety of such speech; they themselves run similar programs.

To the extent modern cable systems wish to engage in such speech, neither Miracle Rock nor the Cable Act is saying that they



achieving that goal (in the absence of carriage) as to cable households. The case for carriage is especially obvious for stations such as KOOG-TV which broadcast a substantial amount (nine hours per day) of non-HSN programming. Yet even if KOOG-TV carried much more HSN programming, and only a few hours a week of non-HSN programming, the logical analysis of the bases for carriage would not be substantially different.

No commercial television station in the country can afford to broadcast nothing but news, public service announcements and public affairs programming. In order to sustain those kinds of programming, stations need the financial support provided by entertainment programming, whether that programming is syndicated or fed through one of the four major networks, and whether the revenues come to the station through spot advertising sales, half hour sales, or network compensation payments. If Miracle Rock were to expand the number of hours in which KOOG-TV carries HSN programming, it would not reduce the proportion of the station's schedule devoted to community service programming. On the contrary, if greater resources were provided by HSN, Miracle Rock would be delighted to double or triple the amount of public interest programming on KOOG-TV in the remaining hours.

The Commission has requested comments as to the proportion of home shopping programming which should be deemed to trigger a discriminatory treatment of HSN affiliates for carriage purposes, if the Commission decides to adopt a different standard for stations broadcasting substantial amounts of such programs.

Miracle Rock submits that any such distinction would tread too heavily on the licensee's discretion in selecting programs. Government operates best when it leaves such decisions to broadcasters, requiring them only to show that, in some of their broadcast week (with no inflexible minimum hours), they have aired programs that serve the public interest. Even a station that devotes 80% of its weekly schedule to home shopping programs is not by definition ignoring the public interest any more than a station 80% of whose schedule consists of other entertainment programming.

At present, KOOG-TV cannot afford to operate from midnight until 7:00 a.m. Surely a silent station is of no greater value to the public than a station broadcasting home shopping programs. Yet if KOOG-TV were to expand its HSN time into the overnight hours, a majority of its broadcast day would consist of HSN programming.



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